banking company of part of its funds upon the security of its shares. If that event happens sub-section 4 specifies the consequences, and they include a personal liability on directors and managers for "the payment of any portion of the amount lent which remains unpaid after deducting the amount realized on the securities." This is a recognition by the sub-section of two things, viz. (1) the continuance of the security on which the loan was made and (2) the discharge of the debt *pro tanto* by the proceeds of its realization. In the face of this it seems to their Lordships impossible to say that section 111 (3) operates to invalidate a lien which would, apart from that sub-section, be an effective lien.

For these reasons their Lordships are of opinion that the appeal should succeed, that the orders of Terrell, J., and of the Court of Appeal should be set aside, and an order made declaring that the bank have a valid lien on the 110 fully paid shares for the principal and interest due to them in respect of the loan. The appellants must have their costs here and below, which in the event of any insufficiency of the bankrupt's estate can be added to their security. Their Lordships will humbly advise His Majesty accordingly.

*Appeal allowed.*

Solicitors for the Appellants—*Peacock and Goddard*, London; *Braddell Brothers*, Singapore.

Solicitors for the Respondent—*Baileys, Shaw and Gillett*, London.

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[ORIGINAL CIVIL JURISDICTION]

[APPELLATE JURISDICTION]

MILLS, J.

March 2, 1933.

TERRELL, COBBETT and WILLIAMSON, JJ.

June 23, 1933.

**MUTTIAH.....Plaintiff (Appellant)**

vs.

**CHANG KIAM HO.....Defendant (Respondent)**

[SINGAPORE SUIT No. 338 of 1932]

[*IN FORMA PAUPERIS* APPEAL No. 7 of 1933]

*Foreign Judgment, action on—F.M.S. Labour Code, 1923 — Order of Deputy Controller of Labour.*

An order of the Deputy Controller of Labour, Ipoh, under S. 98 of the F.M.S. Labour Code, 1923, is not a final and conclusive order productive of a *res judicata* between the parties thereto and therefore cannot be sued on in the Courts of the Colony as on a foreign judgment.

Action.

On the 28th February, 1930, the Deputy Controller of Labour at Ipoh made an order under S. 98 of the F.M.S. Labour Code, 1923, ordering the Defendant to pay to the Plaintiff the sum of $867.20.

The Plaintiff sued the Defendant on that order by specially endorsed writ. The Defendant filed a Defence denying all indebtedness, denying the order, and averring that if such order was made (which was denied) it was not enforceable against the Defendant. He also set up other pleas in defence.

*Menon* for the Plaintiff.

*Mallal* for the Defendant.

**MILLS, J.**—The Plaintiff in this case sues on an order made on the 28th of February, 1930, by the Deputy Controller of Labour at Ipoh, ordering the defendant to pay the sum of $867.20 to the Plaintiff.

Halsbury (2nd Edition, Vol. 6, p. 324) states the law as follows:—"The judgment *in personam* of a foreign Court of competent jurisdiction condemning one of the parties to the payment of a sum of money constitutes a good cause of action in England;" the judgment is regarded as creating a debt between the parties to it, the liability of the defendant arising on an implied contract to pay the amount stated to be due.

The defendant admitted that the order had been made as alleged by the plaintiff, but he raised four defences to the action.

First, he contended that the order was not a final and conclusive judgment of a foreign Court.

I hold that the tribunal constituted by the Controller of Labour is not a Court: first, it is not designated or described as a Court in the Enactment which establishes it: secondly, it is not a Court for all purposes; for instance, the Federated Malay States Court of Appeal has held that it is not a Court within the meaning of the Civil Procedure Code (*Chhin Sin Choy* v. *Chin Kee and others*, F.M.S. Law Reports Vol. IV, p. 3): thirdly, it lacks certain of the qualities which ordinarily characterize a Court; for instance its procedure differs materially from the procedure prescribed for a Court under the Procedure Code; again, the Controller has no power to administer an oath; again the Controller holds his enquiries in private.

Further I hold that the Controller's decision is not a final and conclusive judgment; this is clear from Section 217 of the Labour Code which enacts that an employer or labourer may enforce his civil rights and remedies by a suit in Court, in any case in which proceedings are not proceeded with to judgment and satisfaction under the Labour Code.

Secondly, the defendant contended that the proceedings before the Controller were irregular because no complaint was made to the Controller by the Tamil labourers. I hold against that contention for three reasons: first, the English

Courts will not regard a mere irregularity of procedure as vitiating the proceedings of a foreign Court (*Pemberton* v. *Hughes*, 1899, 1 Ch., p. 781): secondly, it is not clearly proved that the Tamil labourers did not complain: indeed the plaintiff says they did: thirdly, Section 98 (ii) (h) expressly provides that it shall not be necessary for each labourer to make a separate complaint.

Thirdly, the defendant contended that he was not amenable to the jurisdiction of the Controller. I hold against that contention; for I find as a fact that one Fu Luk, the duly authorized agent who personally managed the defendant's business in Ipoh, attended the proceedings, after being personally served with a summons, and personal service on such an agent is sufficient service on the defendant both under Section 220 (1) (a) of the Labour Code and under Section 115 of Ordinance No. 102 (Civil Procedure Code). Personal service on a defendant renders him amenable to the jurisdiction.

Fourthly, the defendant contended that the plaintiff cannot succeed because certain other labourers having an interest in the Controller's order, are not before the Court. The non-joinder of parties does not prevent the Court from dealing with the plaintiff's claim for a debt due to himself, but I hold that the Court is precluded from adjudicating on the debts alleged to be due to the other labourers; their debts are said by the Controller to amount to about $250.

So far as this defence is concerned, then, I hold that if the plaintiff's claim were in other respects well-founded, he would be entitled to judgment in the sum of $617.20.

To conclude, in my judgment the plaintiff fails to substantiate his claim for $867.20: in the first place, the Controller's order is not the judgment of a Court; in the second place, the Controller's order is not final and conclusive, and in the third place, the plaintiff has no right to claim the sum of $250 due to certain other labourers.

I dismiss the plaintiff's claim with costs.

*Action dismissed.*

From this Judgment the Plaintiff appealed *in forma pauperis*.

The Appeal was heard by Terrell, J., Cobbett, J., and Williamson, J.

*Menon* for Appellant.

*Mallal* for Respondent.

*Cur. Ad. Vult.*

**TERRELL, J.**—The appellant obtained an order on the 28th February, 1930, as a result of an inquiry before the Deputy Controller of Labour, Ipoh, whereby the respondent was directed to pay to the plaintiff $867.20 of which $250 was owed by the appellant to certain coolies. The respondent having left Ipoh and come to reside in Singapore, the appellant sued the respondent in Singapore as on a foreign judgment.

The learned trial judge dismissed the claim on various grounds. One of such grounds was that the order of the Deputy was not "final and conclusive." As to the necessity for the order being "final and conclusive" there can be no doubt whatever, as Lord Herschell said in the case of *Nouvion* v. *Freeman*, L.R. 15 A.C. page 1, at page 9, "It must be shown that in the Court by which it was pronounced, it conclusively, finally and for ever established the existence of the debt of which it is sought to be made conclusive in this country, so as to make it *res judicata* between the parties." The principle of this case was followed in *Harrop* v. *Harrop*, 1920, 3 K.B. page 386. In that case the Judicial Commissioner of Perak had affirmed a maintenance order made by a magistrate. As under Section 41 of the Small Offences Enactment No. 11 of 1898, the order was liable to be abrogated or varied on proof of a change in circumstances the Court refused to consider it as "final and conclusive."

On examining the provisions of the F.M.S. Labour Code of 1923 it at once becomes apparent that the order of the Deputy Controller of Labour is neither final nor conclusive. Section 98 is the section which deals with the adjudication of questions between the employers and Chinese labourers and by the amending Enactment of 1925, this has been extended to Tamil labourers who join in a complaint made by Chinese labourers. The Deputy Controller cannot enforce his own order, but under sub-section (ii) (e) can send it to a First Magistrate's Court to be enforced. Then sub-section ii (g) says "Nothing in this section shall limit or affect the jurisdiction of any Court." It follows therefore that notwithstanding any order made by the Controller the Court has concurrent jurisdiction in the same matter. Section 217 puts the matter beyond all possible doubt. It provides:

> "Nothing in this Enactment shall operate to prevent any employer or labourer from enforcing their respective civil rights or remedies for any breach or non-performance of an agreement or contract by a suit in Court, in any case in which proceedings are not instituted, or, if instituted, are not proceeded with to judgment *and satisfaction* under this Enactment."

From this it is clear that the employee's remedies are not alternative but concurrent. Even if he had commenced proceedings before the Controller and got an order, he can at any time before actual satisfaction of the order commence other proceedings in the Magistrate's Court. The Court may come to an entirely different conclusion on the same facts. It follows

that the Controller's order is never final or conclusive until it is satisfied in which case no question could arise.

In my view therefore, this objection is fatal to the appellant's claim and it is not necessary to consider the other grounds upon which the learned judge arrived at his decision.

I would dismiss the appeal. As the appellant is a pauper there will be no order as to costs.

**COBBETT, J.**—I agree.

**WILLIAMSON, J.**—I agree.

*Appeal dismissed.*

Solicitor for the Plaintiff (Appellant)—*K. P. K. Menon.*

Solicitor for the Defendant (Respondent)—*N. A. Mallal.*

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[APPELLATE CIVIL JURISDICTION]

HUGGARD, C.J., TERRELL and MILLS, JJ.

July 4, 1933.

**Dr. C. J. PAGLAR.....Appellant**

**vs.**

**THE MEDICAL COUNCIL.....Respondents**

[SINGAPORE SPECIAL APPEAL No. 1 of 1933]

## IN THE MATTER OF ORDINANCE No. 99 (MEDICAL REGISTRATION, 1907) AND IN THE MATTER OF AN ENQUIRY INTO THE PROFESSIONAL CONDUCT OF DR. C. J. PAGLAR.

*Ordinance No. 99 (Medical Registration)—Appeal—Definition of Supreme Court.*

A medical practitioner was found guilty of infamous conduct by the Medical Council. He appealed under sec. 18 of Ordinance 99 (Medical Registration) to the Supreme Court.

*Held*, that an appeal to the Supreme Court under sec. 18 of Ordinance 99 (Medical Registration) lies to a single judge and not direct to the full Court of Appeal.

Appeal to the full Court of Appeeal (Sir W. C. Huggard, C. J., Terrell, J., and Mills, J.)

When the Appeal came on for hearing the Bench asked that as a preliminary to the hearing of the Appeal, argument should be directed to the question whether under Ordinance 99 the appeal lay from the Medical Council to the full Court of Appeal or to the Supreme Court.

*Knowles* for Appellant.

*Campbell* for Respondent.

*Cur. Ad. Vult.*

**HUGGARD, C. J.**—This is an appeal under the provisions of section 18 of Ordinance No. 99 (Medical Registration) against the decision of the Medical Council under which the Appellant Dr. Charles Joseph Paglar was found guilty of infamous conduct in a professional respect and his name was ordered to be erased from the Medical Register.

Sub-section (2) of section 18 confers on any person whose name has been struck out from the register the right to appeal to the Supreme Court.

A preliminary point was taken by this Court as to whether, under the sub-section in question, such an appeal lies to the Court of Appeal or to a single Judge, and Counsel for the Appellant and the Respondent were invited to address us on this point.

The only previous appeal under the Ordinance was *F. W. Goonetilleke* v. *The Medical Council* heard in 1911 and reported in 12 S.S.L.R., page 95. In that case the appeal was heard by a Bench of four Judges and the following paragraph appears in the statement of facts at page 97:—

> "The appeal was heard before Law, Ag. C. J., Thornton, Fisher and Ebden, JJ., the Ordinance XI of 1907 only providing for an appeal to 'the Supreme Court' and that consisting by virtue of the Courts Ordinance, 1907, of the Chief Justice and three or more Puisne Judges."

There is, however, nothing in the Report to show that the question as to the proper constitution of the Tribunal was argued, so that the Court gave any ruling on the matter. I do not think that the fact that the appeal referred to was heard before four Judges is in any way binding on this Court, and Counsel in the present case did not rely on it. In fact I understood it to be agreed by Counsel for both the Appellant and the Respondent that the appropriate Tribunal must be either the Court of Appeal or a single judge.

Now, it was contended by Counsel for both parties that an appeal under section 18 (2) of the Ordinance lies to the Court of Appeal. The basis of this contention was that as this is an *appeal* to the Supreme Court it must necessarily be heard by the Supreme Court in its appellate jurisdiction which, by virtue of section 10 of Ordinance No. 101 (Courts), means the Court of Appeal consisting of not less than three Judges.

I agree that *prima facie* this contention is sound, but there is, of course, nothing to prevent the Legislature from conferring appellate jurisdiction in any particular matter on a single Judge. The question we have to decide, therefore, is what the Legislature intended by the words "the Supreme Court" in section 18 (2) of the Ordinance.

In my view the intention of the Legislature in using the words "the Supreme Court" in Ordinance No. 99 (Medical Registration) is